

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

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Of Attorneys for Defendants Multnomah County, Sheriff Bernie Giusto, Deputy Richard Hathaway, Deputy Robert Griffith, and Sergeant Catherine Gorton.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Michael Evans,

Plaintiff,

v.

MULTNOMAH COUNTY, Sheriff BERNIE
GUISTO, Deputy RICHARD HATHAWAY,
Deputy ROBERT GRIFFITH, Officer RYAN
ALBERTSON, Sergeant CATHLINE
GORTON, and JOHN DOES 1 – 3,

Defendants.

Civil No. **CV '07 - 1532 - BR**

NOTICE OF REMOVAL

TO: Judges of the United States District Court for the District of Oregon;
Administrator of the Circuit Court of the State of Oregon for the County of Multnomah;
and Leah Greenwald and Benjamin Haile, Attorneys for Plaintiff.

TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that, pursuant to 28 USC §§1441 and 1446, Defendants
Multnomah County, Sheriff Bernie Giusto, Deputy Richard Hathaway, Deputy Robert

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Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, Oregon 97214
(503) 988-3138

17915

Griffith, and Sergeant Catherine Gorton hereby remove to this Court the case now pending in Multnomah County Circuit Court as *Michael Evans v. Multnomah County, Sheriff Bernie Guisto [sic]*, *Deputy Richard Hathaway, Deputy Robert Griffith, Officer Ryan Albertson, Sergeant Cathline [sic] Gorton, and John Does 1-3*, Multnomah County Circuit Court Case No. 0709-10371.

As grounds for removal, Defendants Multnomah County, Sheriff Bernie Giusto, Deputy Richard Hathaway, Deputy Robert Griffith and Sergeant Catherine Gorton respectfully give Notice of Removal as follows:

NOTICE OF REMOVAL IS TIMELY AND ALL DEFENDANTS JOIN IN THE REMOVAL.

1. On or about September 12, 2007, this action was commenced against defendants in the Circuit Court of the State of Oregon for the County of Multnomah, entitled *Michael Evans v. Multnomah County, Sheriff Bernie Guisto [sic]*, *Deputy Richard Hathaway, Deputy Robert Griffith, Officer Ryan Albertson, Sergeant Cathline [sic] Gorton, and John Does 1-3*, Multnomah County Circuit Court case No. 0709-10371.

A copy of the Summons and Complaint was served on defendant Multnomah County on September 25, 2007. Copies of the Summons and Complaint are attached hereto as Exhibits 101 and 102 respectively and made a part of this notice. Thirty days has not expired since receipt by defendants of a copy of the Complaint herein, and defendants have not entered or appeared or voluntarily invoked or submitted to the jurisdiction of the Circuit Court for the State of Oregon for the County of Multnomah in any manner.

2. The above-described action against defendants is a civil action which may be removed from that court by defendants under the provisions of Title 28 USC §§ 1331, 1367 and 1441, in that this Court has original jurisdiction over the first, third and fourth claims against defendants as it is a civil rights action brought pursuant to 42 USC § 1983, seeking damages on

Page 2 – NOTICE OF REMOVAL

account of an alleged violation of plaintiff's rights, privileges and immunities secured by the Constitution and laws of the United States of America.

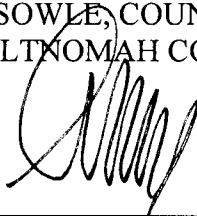
3. Pursuant to 28 USC § 1446(d), defendants will file a notice of removal with the Clerk of the Circuit Court, Multnomah County, Oregon, informing the court that this matter has been removed to federal court. A copy of this Notice of Removal, including all supporting exhibits, will be attached to the notice of removal filed with the circuit court. Pursuant to 28 USC § 1446(d), a copy of this Notice of Removal is also being served upon plaintiff.

THEREFORE, defendants Multnomah County, Sheriff Bernie Giusto, Deputy Richard Hathaway, Deputy Robert Griffith, and Sergeant Catherine Gorton give notice that the above action now pending against them in the Circuit Court of the State of Oregon for the County of Multnomah has been removed therefrom to this Court.

DATED this 11th day of October 2007.

Respectfully submitted,

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON



Stephen L. Madkour, OSB No. 94109

Assistant County Attorney

Of Attorneys for Defendants Multnomah County,
Sheriff Bernie Giusto, Deputy Richard Hathaway,
Deputy Robert Griffith, and Sergeant Catherine Gorton

CERTIFICATE OF SERVICE

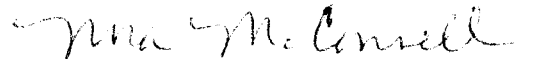
I hereby certify that on October 12, 2007, I served the foregoing **NOTICE OF**

REMOVAL on:

Leah Greenwald
Benjamin Haile
Haile Greenwald, LLP
620 SW Main Street, Suite 616
Portland, OR 97205
Attorneys for Plaintiff

by the following method or methods as indicated:

- (**X**) by **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by causing a true copy thereof to be **hand delivered** to said person(s) at the last known address for said person(s) as shown above, on the date set forth above.
- () by mailing via **certified mail, return receipt requested**, to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.



Nora McConnell
Paralegal

CERTIFICATE OF SERVICE

9015-07
 9/24/07
 9:25 AM

IN THE CIRCUIT COURT OF THE STATE OF OREGON
 FOR THE COUNTY OF MULTNOMAH

COP

MICHAEL EVANS,

Plaintiff,

vs.

Case No. 0709-10371

SUMMONS

MULTNOMAH COUNTY, Sheriff BERNIE GUISTO, Deputy RICHARD HATHAWAY, Deputy ROBERT GRIFFITH, Officer RYAN ALBERTSON, Sergeant CATHLINE GORTON, and JOHN DOES 1 - 3

Defendants.

CERTIFIED TRUE COPY

Ben Haile

To: Multnomah County
 C/o Agnes Sowle
 Multnomah County Attorney
 501 SE Hawthorne Blvd. Suite 500
 Portland OR 97214

You are required to appear and defend the complaint filed against you in this matter within thirty (30) days from the date of service of this summons upon you. If you fail to do so, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

Ben Haile

BENJAMIN HAILE
 Oregon State Bar # 04066
 Of Attorneys for Plaintiff(s)

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons and complaint in the above-entitled action. I hereby declare that the above is true to the best of my knowledge and belief. I understand that this document is made for use as evidence in court and is subject to penalty of perjury.

Ben Haile

Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:

You are directed to serve a true copy of this summons, together with a true copy of the complaint, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed. You are further directed to make your proof of service on the reverse side of this summons or upon a separate similar document which you shall attach to this summons.

Haile Greenwald LLP
 Attorneys for Plaintiff
 620 SW Main, Suite 616
 Portland, Oregon 97205
 Telephone: (503) 224-3240
 FAX: (503) 223-4518

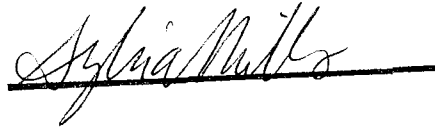
Ben Haile

Attorney for Plaintiff

EXHIBIT 101
 PAGE 1 OF 1

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CERTIFIED TRUE COPY



**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH**

MICHAEL EVANS,

Plaintiff,

vs.

MULTNOMAH COUNTY, SHERIFF
BERNIE GUISTO, DEPUTY RICHARD
HATHAWAY, DEPUTY ROBERT
GRIFFITH, OFFICER RYAN ALBERTSON,
SERGEANT CATHLINE GORTON, and
JOHN DOES

1 - 3

) Case No: 0709-10371

)

)

)

) COMPLAINT FOR ASSAULT, BATTERY,
) SEIZURE BY EXCESSIVE FORCE IN
) VIOLATION OF THE FOURTH
) AMENDMENT, and MALICIOUS
) PROSECUTION.

)

) CLAIM NOT SUBJECT TO MANDATORY
ARBITRATION

Defendants.

INTRODUCTION

1.

In the early morning of September 11, 2006, Mr. Evans was booked into the Multnomah County Detention Center. Mr. Evans expressed frustration regarding his arrest and he explained that he was having difficulty hearing the directions given to him. Thereafter, Multnomah County Sheriff's Deputies and a Portland Police Bureau officer violently beat him. Mr. Evans now brings claims for Assault, Battery and Constitutional violations.

THE PARTIES

2.

At all material times the plaintiff, Michael Evans (hereinafter Mr. Evans), resided in the City of Portland, County of Multnomah, State of Oregon.

1 3.

2 At all material times Defendant Deputy Richard Hathaway (hereinafter Deputy
3 Hathaway) was working under color of law for Defendant Multnomah County with the
4 Multnomah County Sheriff's Office (hereinafter MCSO).

5 4.

6 At all material times Defendant Deputy Robert Griffith (hereinafter Deputy Griffith) was
7 working under color of law for Defendant Multnomah county with MCSO.

8 5.

9 At all material times Defendant Sergeant Cathline Gorton (hereinafter Sergeant Gorton)
10 was working under color of law for Defendant Multnomah county with MCSO.

11 6.

12 At all material times Defendants John Does 1 – 3 were working under color of law for the
13 County with MCSO.

14 7.

15 At all material times, Sheriff Bernie Guisto (hereinafter Sheriff Guisto) was the head of
16 MCSO and he is sued in his official capacity. Sheriff Guisto is the general manager of MCSO
17 and is responsible for its administration, operation, and training. At all times relevant herein,
18 Sheriff Guisto and the agents and employees of MCSO acting under his supervision were acting
19 under color of state law.

20 8.

21 Defendant Multnomah County (hereinafter Multnomah County) is a municipal entity,
22 organized under the laws of the State of Oregon with the capacity to sue and be sued. The
23 County is the legal and political entity responsible for the actions of MCSO and its officials.
24 MCSO is a department or division of Defendant County and is the lead agency responsible for
25 the deprivation of Mr. Evans' constitutional rights by Defendants Officer Hathaway, Officer

1 Griffith, Sergeant Gorton, and Sheriff Guisto. The County is sued in its own right and on the
2 basis of the acts of its officials, agents, and employees, which were taken pursuant to improper
3 training policies and inadequate internal investigations of use of force incidents.

4 9.

5 At all material times Defendant Officer Ryan Albertson (hereinafter Officer Albertson)
6 was working under color of law for Defendant City of Portland (hereinafter City) with the
7 Portland Police Bureau.

8 10.

9 At all times mentioned herein Deputy Hathaway, Deputy Griffith, Sergeant Gorton,
10 Officer Albertson, and John Does 1 -3 were acting in their individual capacities pursuant to
11 authority delegated or conferred by named Defendants and, in doing or failing to do the things
12 complained of, was acting within the scope of that authority.

13
14 **THE FACTS**

15 11.

16 On or about September 11, 2006 Mr. Evans was booked into the Multnomah County
17 Detention Center (hereinafter MCDC). While Mr. Evans was being booked, he expressed
18 frustration about his arrest.

19 12.

20 Mr. Evans has a partial hearing impairment. When Mr. Evans was asked to perform
21 certain tasks, he could not hear the commands. He explained to the Deputy that he could not
22 hear the directions given to him. On various occasions, Mr. Evans asked that the Deputy repeat
23 the instructions.

24 ///

25 ///

1 13.

2 Shortly thereafter, Deputy Hathaway grabbed Mr. Evans' right arm and put his hand in a
3 control hold. Deputy Griffith grabbed Mr. Evans by the other arm. Then Deputy Hathaway
4 kicked Mr. Evans in the back of his knee as they forced him down to the ground.

5 14.

6 Once they took Mr. Evans to the ground, Deputy Hathaway punched him at least seven
7 times. Deputy Griffith punched him two times and used his knee to push Mr. Evans' head into
8 the ground.

9 15.

10 While Mr. Evans was restrained on the ground, Officer Albertson joined the altercation
11 and kneed Mr. Evans two times. Officer Hager then helped pin his leg to the ground. Sergeant
12 Gorton pointed a taser in Mr. Evans' face, aimed the laser light in his eye and threatened to use it
13 against him.

14 16.

15 Mr. Evans had lost consciousness during the beating and gained consciousness when
16 Sergeant Gorton shined the taser in his eye.

17 17.

18 Mr. Evans did not receive medical treatment for approximately 18 hours after he was
19 beaten.

20 18.

21 Deputy Hathaway wrote a Misconduct Hearing Report about the incident. He asserted
22 that that Mr. Evans "violated rule(s) assault on staff, disruptive, disrespectful behavior, failed to
23 do as ordered." He added, "Inmate Evans struck me in the nose during booking. A use of force
24 occurred in the booking area. Evans would not follow the directions given to him during
25 booking."

1 19.

2 Deputy Hathaway wrote a Use of Force report about the incident. He proclaimed to have
3 used three focused blows with his right fist against Mr. Evans. Deputy Hathaway, however,
4 punched Mr. Evans at least 7 times.

5 20.

6 As a result of Deputy Hathaway's reports of the incident, Mr. Evans was placed on level
7 four lockdown, a disciplinary solitary confinement. Mr. Evans was detained alone in a small cell
8 for 23 hours and 45 minutes out of every day for 60 days.

9 21.

10 Also as a result of Deputy Hathaway's reports of the incident, Mr. Evans was charged
11 with Assaulting a Public Safety Officer.

12 22.

13 Deputy Hathaway was under subpoena to testify at Mr. Evans' criminal trial for the
14 charge of Assaulting a Public Safety Officer. Deputy Hathaway failed to appear at the trial. The
15 charge of Assaulting a Public Safety Officer was dismissed.

16 23.

17 As a result of the assault, Mr. Evans suffered from a bloody, broken nose, abrasions,
18 contusions and severe swelling to his head and face, as well as bruising and swelling on his back
19 and injuries to his knee and back. While he waited for medical attention, Mr. Evans used his
20 own shirt as a towel to soak up the blood and apply pressure to his broken, bleeding nose. He
21 continues to experience difficulty with the peripheral vision in his left eye, in which he sees a
22 black line in the left field of view. In addition, he experiences severe, ongoing back and knee
23 pain due to the blows he received.

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THE CLAIMS

FIRST CLAIM FOR RELIEF:

Fourth and Fourteenth Amendment; 42 U.S.C. § 1983

24.

Paragraphs 1 through 23 are incorporated by reference herein.

25.

The conduct of Deputies Hathaway and Griffith in punching and kneeing Mr. Evans, and Officer Albertson in kneeing Mr. Evans and Sergeant Gorton in shining the taser light in his eye and threatening him, violated his right under the Fourth Amendment to the United States Constitution to be free from excessive force when being seized by public officials.

26.

This conduct also constitutes summary punishment without due process of law, in violation of the Fourteenth Amendment.

27.

A cause of action for these violations of constitutional rights is provided by 42 U.S.C. § 1983.

28.

The actions of Defendants in violation of Plaintiff's constitutional rights were the direct and proximate cause of bodily injury, pain, suffering, mental distress, humiliation, loss of liberty, and legal expenses.

29.

Pursuant to 42 U.S.C. § 1983, Plaintiff claims compensatory damages from Deputies Hathaway and Griffith, Sergeant Gorton and Officer Albertson; and compensatory damages from the County for violation of his constitutional rights under color of law.

///

SECOND CLAIM FOR RELIEF:
Assault and Battery

30.

Paragraphs 1 through 29 are incorporated by reference herein.

31.

On or about September 11, 2007 in the intake area of MCDC, Deputy Hathaway kicked and forcefully punched Mr. Evans, Deputy Griffith forcefully kned Mr. Evans and punched him and pushed his head into the ground, Officer Albertson kned Mr. Evans, and Sergeant Gorton shined a taser in his face and threatened to use it while Evans was pinned to the floor.

32.

In doing these acts, Deputies Hathaway and Griffith, Sergeant Gorton and Officer Albertson had the intent to make contact with Mr. Evans' person, to cause pain, and to cause fear of further imminent offensive contact.

33.

Mr. Evans did not consent to any of the acts of Deputies Hathaway and Griffith, Sergeant Gorton and Officer Albertson alleged above.

34.

As a proximate result of the acts of Deputies Hathaway and Griffith, Sergeant Gorton and Officer Albertson, Mr. Evans suffered bruised legs, a severely injured knee, scrapes, contusions, bruises and swelling across on his head, face, and eyes, and an injured back, as well as great pain.

35.

Mr. Evans was also placed in fear of additional harmful and offensive physical contact.

///

///

THIRD CLAIM FOR RELIEF:
Malicious Prosecution: 42 U.S.C. §1983

36.

Paragraphs 1 through 35 are incorporated by reference herein.

37.

Deputy Hathaway initiated the criminal charge of Assaulting a Public Safety Officer against Mr. Evans.

38.

The criminal charge was legally terminated in Mr. Evans' favor.

39.

The arrest and criminal charge of Assaulting a Public Safety Officer were brought against him was without probable cause.

40.

The arrest and criminal charge brought against him was initiated with malice. There was an existence of a primary purpose other than that of securing an adjudication of the claim.

41.

Mr. Evans suffered a special injury. He was seized, and received level four disciplinary treatment in MCDC.

42.

As a result, Plaintiff suffered the economic and non-economic damages described below in the paragraphs dedicated to All Claims.

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FOURTH CLAIM FOR RELIEF:

**Constitutional Rights Violations by the Multnomah County and Sheriff Guisto
Due to Failure to Adequately Train and Supervise.**

43.

Paragraphs 1 through 42 are incorporated by reference herein.

44.

The County, and Sheriff Guisto in his supervisory capacity as the Multnomah County Sheriff, recklessly failed to adequately supervise, train, and discipline Multnomah County Sheriff Deputies regarding conflict management, and appropriate use of force. The County and Sheriff Guisto have been deliberately indifferent to the need for conflict training and use of force training.

45.

The County, and Sheriff Guisto in his supervisory capacity as the Multnomah County Sheriff, recklessly failed to adequately investigate Sheriff's Deputies use of force reports and inmate use of force complaints.

46.

As a direct and proximate result of the failure of the County and Sheriff Guisto to properly train, supervise and discipline police officers, the Plaintiff was deprived of his Fourth and Fourteenth Amendment rights to be free from excessive force and summary punishment.

47.

As a direct, proximate, and foreseeable result of the violation of the Plaintiff's constitutional rights, the Plaintiff suffered the physical and emotional injuries and humiliation described above.

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ALL COUNTS

48.

Plaintiff is entitled to an award of attorneys fees and costs, pursuant to 42 U.S.C. §1988.

49.

Plaintiff suffered economic and non-economic damages in the amount of \$60,000.

50.

The Circuit Court of the State of Oregon for the County of Multnomah has jurisdiction of the all the above listed causes of action arising under federal and state law as a court of general jurisdiction.

51.

The plaintiff gives notice of his intention to move for punitive damages.

52.

Plaintiff requests a trial by a jury of his peers on his claims for relief.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment as follows:

1. Findings and Orders against Deputies Hathaway and Griffith, Sergeant Gorton and Officer Albertson that they violated the protected constitutional rights of Plaintiff, causing him non-economic damages;

2. Findings and Orders that the municipal policies were defective as applied and caused Constitutional deprivations to be suffered by Plaintiff and injunctive relief is required to prevent recurring violations;

3. An award of noneconomic damages in an amount of \$60,000;

4. Plaintiff's costs, disbursements and attorney fees.

1 5. Such other and further relief, including all appropriate equitable relief, as the Court
2 may deem proper and just.

3
4 Dated this 12th day of September, 2007.

5 */s/ Leah Greenwald*

6
7 Leah Greenwald OSB #04297
8 Haile Greenwald, LLP

9 */s/ Benjamin Haile*

10 Benjamin Haile OSB #04066
11 Haile Greenwald, LLP